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INDIGENOUS ISSUES

Report of the second workshop on a permanent forum for indigenous people within the United Nations system held in accordance with Commission on Human Rights resolution 1997/30

(Santiago, 30 June-2 July 1997)

Addendum

Contribution of Mrs. Erica-Irene Daes, Chairperson-Rapporteur of the Working Group on Indigenous Populations

The annexed text constitutes Chapter V of the report of the second workshop.

GE.98-12631 (E)

ANNEX

V. CONTRIBUTION BY MRS. ERICA-IRENE DAES, CHAIRPERSON-RAPPORTEUR OF THE WORKING GROUP ON INDIGENOUS POPULATIONS

1. There is a need for an urgent establishment of a permanent forum for indigenous people within the United Nations system. The following basic proposals are made in this respect.

A. A new coordinating body is needed

2. The proposal for a permanent forum for indigenous people was adopted by the World Conference on Human Rights, and by the General Assembly, in 1993. Since that time, the urgent need for such a body has increased.

3. In 1984, there were only two United Nations bodies concerned with the situation of indigenous people: the Working Group on Indigenous Populations, as part of the United Nations human rights programme, and the International Labour Organization. The only legal instrument in existence at that time which dealt explicitly with indigenous peoples was the 1957 ILO Convention on Indigenous and Tribal Populations, No. 107.

4. Today, by contrast, indigenous peoples are the focus of a growing number of standard-setting and implementation activities in the fields of human rights, environment and sustainable development.

5. In the field of human rights, the past five years have produced a number of important new instruments. They include:

(a) A second ILO Convention, now ratified by 10 States, No. 169 of 1989;

(b) Two draft declarations, the draft declaration on the rights of indigenous peoples, and the draft principles and guidelines on the protection of the heritage of indigenous peoples, which I elaborated in my capacity as Special Rapporteur.

6. In the fields of environment and sustainable development, we have witnessed a rapid proliferation of new instruments and new United Nations forums where indigenous issues are debated. They included:

(a) Agenda 21, adopted at the United Nations Conference on Environment and Development in 1992, with an entire chapter devoted to the role of indigenous peoples in sustainable development;

(b) The United Nations Commission on Sustainable Development, which is charged with the implementation of Agenda 21, and has given increasing attention to the concerns of indigenous peoples;

(c) The Convention on Biological Diversity, adopted in 1992 and now almost universally ratified, which contains explicit provisions on the traditional knowledge and resource rights of indigenous peoples;

(d) The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, which also contains specific provisions on traditional knowledge and resource rights;

(e) The Intergovernmental Panel on Forests, which for the past two years has considered the traditional knowledge and land rights of indigenous peoples in the context of a possible new United Nations legal instrument on forests;

(f) The Food and Agriculture Organization of the United Nations, which has been dealing with traditional knowledge in the context of world genetic resources; and, lastly,

(g) Programmes of UNESCO in biodiversity science (DIVERSITAS), the Man and the Biosphere Programme and the World Heritage Programme.

7. The issues of intellectual property, which have been raised in connection with nearly all of the foregoing activities, are also arising in the context of negotiations within the World Trade Organization and the World Intellectual Property Organization. There are also a growing number of United Nations operational initiatives in this field including the Programme of Activities for the International Decade of the World's Indigenous People and special projects organized by the International Labour Organization and the United Nations Development Programme, as well as the World Bank.

8. Thus, from a very modest beginning as a question of human rights, the issue of indigenous peoples now involves four United Nations conventions, two functional commissions of the Economic and Social Council and their subsidiary bodies, and at least three specialized agencies, as well as operational bodies, of the United Nations and the international financial institutions. Yet, it must be admitted, many operational bodies and specialized agencies have thus far taken no action to ensure that their activities conform to existing legal standards for the protection of indigenous peoples, despite the adoption of ECOSOC decision 1992/255, which also requires consultation with the peoples affected.

9. Coordination, transparency and oversight are urgently needed - and not only for reasons of efficiency and accountability, but also because indigenous peoples themselves are becoming overwhelmed with meetings and information, and are losing their capacity to participate fully and meaningfully in all of the international decisions which affect them. There is a serious danger of duplication, conflicting programmes, waste, and the adoption of inconsistent legal norms. There is also, sadly, a continuing large gap between United Nations policies respecting indigenous peoples and the actual practices of many parts of the United Nations system.

B. There is an immediate opportunity to take action

10. The current efforts at restructuring the United Nations provide a rare opportunity to address the proliferation of initiatives affecting indigenous peoples. We must not waste this opportunity. It is a fact of political life that institutions resist change, and that resistance is greatest in very

large, extremely complex institutions such as the United Nations. At the present moment, however, there is a consensus that the United Nations must reorganize itself to meet new challenges in a changing economic, social and political order. There is a realization, furthermore, that the United Nations simply must achieve more, with fewer resources.

11. Rationalization and consolidation of United Nations organs and administration will liberate financial resources which can then be used to strengthen coordination and accountability throughout the United Nations system. Creation of a permanent forum for indigenous peoples as a system-wide coordination and evaluation body would be entirely consistent with the broad goals of restructuring. Indeed, it is extremely important to underscore the point that the permanent forum will win serious political support only to the extent that it is designed specifically to serve this purpose - coordination and evaluation - and not simply as a policy forum.

C. Coordination will produce concrete benefits

12. Greater coordination and evaluation of programmes and initiatives for indigenous peoples will prove concretely beneficial to Governments in all regions of the world. At least three kinds of benefits should be considered, which may be described as development, reconciliation and partnership.

13. Development. Indigenous peoples today are about 5 per cent of the world's population. Less than .10 per cent of the United Nations budget is spent directly on indigenous issues, and most of this small investment has been restricted to standard-setting activities. On the other hand, a large portion of the nearly 2 billion dollars spent on United Nations-system operational programmes each year is devoted to regions which have large indigenous populations who may be directly affected - sometimes adversely. The United Nations can improve the positive impacts of its technical and financial assistance in these regions by ensuring that indigenous peoples participate fully in the design and benefits of projects. Indeed, improving the quality of projects in indigenous peoples' territories will probably attract increased support from the donor countries. A permanent forum for indigenous peoples can provide project expertise and programme coordination, facilitate collaboration with indigenous peoples, and serve as a clearing house for Governments and NGOs seeking successful models.

14. Reconciliation. In many parts of the world, the future stability and democratic development of States will depend fundamentally on the extent to which indigenous peoples become fully involved in political and economic life, on just and mutually satisfactory terms. Over the past decade we have witnessed some dramatic, positive developments in this respect - for instance, the role of indigenous peoples in Central American peace processes, and the negotiation of institutions of autonomy or self-government for indigenous peoples in countries as diverse as Colombia, Bolivia, Norway and Canada. This is an important factor in the global trend towards a new kind of national integration and democracy, which is pluralistic and fosters diversity. A permanent forum can not only serve as a clearing house of useful experiences in reconciliation and nation-building, but actually help facilitate

communication, and build trust between Governments and indigenous peoples in individual cases. In other words, a permanent forum could become a very specialized and very useful mechanism for what we now call peace-building.

15. Partnership. Agenda 21, as well as General Assembly resolutions governing the International Year and Decade of the World's Indigenous People, stress the concept of "partnership" between indigenous peoples and States. In all countries where indigenous peoples live, there are important advantages to building true partnerships to which indigenous peoples can contribute their traditional knowledge, their creativity, and their unique cultural and artistic heritage. Indigenous medicine alone is an enormous asset to those countries which choose to respect and protect it, with a global value of many millions of dollars. The permanent forum for indigenous peoples could not only foster national-level development partnerships in areas such as medicine, agriculture and conservation, but also international partnerships that will have a regional or worldwide economic impact.

D. Suggested mandate and functions

16. It follows from these considerations that the proposed permanent forum should be established at the highest level within the United Nations system and have a mandate which includes, inter alia and most critically, the following four system-wide functions:

(a) Overview and coordination of all United Nations standard-setting activities and operational programmes to the extent that they have direct effects on indigenous peoples;

(b) Impact assessment and evaluation of United Nations-sponsored projects which are aimed at or have direct effects on indigenous peoples, and using the findings to promote fiscal responsibility, as well as accountability to the intended beneficiaries;

(c) Mobilization of relevant expertise from all sources, including indigenous peoples themselves, and making expertise accessible through, among other things, a clearing house mechanism;

(d) Strengthening indigenous participation in international affairs by providing indigenous peoples with a visible, influential and economical platform for sharing expertise and concerns with the States Members and the secretariats of the United Nations system.

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Report of the second workshop on a permanent forum for indigenous people within the United Nations system held in accordance with Commission on Human Rights resolution 1997/30

(Santiago, 30 June-2 July 1997)

Addendum

1. In its resolution 1997/30 of 11 April 1997, the Commission on Human Rights requested the High Commissioner for Human Rights to transmit the report of the second workshop on a permanent forum for indigenous people within the United Nations system to Governments, relevant United Nations bodies, organizations and specialized agencies, and indigenous organizations for their comments and to submit the comments received to the Commission at its fifty-fourth session. The present document contains the comments received as at 16 March 1998.

DENMARK

[10 March 1998]
[English]

1. The large number of participants is a clear indication that there is a growing interest in all parts of the United Nations system and in the international community for the project of a permanent forum. A substantial exchange of views took place, and a fruitful debate was held during the workshop in a true spirit of partnership.

2. The report (E/CN.4/1998/11) reflects fully the comprehensive and rich debate which took place in Santiago de Chile.

3. At the workshop Denmark presented a working paper containing an outline of a permanent forum for indigenous people which is annexed to the report of the workshop. The outline presents concrete suggestions as to name, mandate, placement within the United Nations system, location, membership, period of membership, procedure and financing of such a permanent forum.

4. With regard to the discussion of the mandate (paras. 19-24), Denmark wishes to clarify that the mandate should be subject to a revision clause in order that necessary changes concerning mandate, structures and procedures of the permanent forum may be made in the light of experiences gained over a certain period of time.

5. Concerning financial implications (para. 32), Denmark would like to comment that the fact that a permanent forum is funded from the United Nations regular budget should not exclude the possibility of providing voluntary funds.

6. Finally, Denmark fully supports the suggestion in the final section of the report that the Commission on Human Rights at its fifty-fourth session should consider how to further the process of the establishment of a permanent forum for indigenous people within the United Nations system, inter alia through the drafting of concrete proposals to this effect and bearing in mind the possibility of submitting the matter to the Economic and Social Council for action.

INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS

[16 March 1998]
[Spanish]

The IWGIA transmitted the text of a declaration on a permanent forum adopted at the Second International Indigenous Conference on the Permanent Forum for Indigenous Peoples held in Panama from 4 to 6 March 1998.

Declaration of the Second International Indigenous Conference on a Permanent Forum for Indigenous People

Ukupseni, Kuna Yala, Panama
4-6 March 1998

We, the representatives of the indigenous peoples meeting in Kuna Yala, Panama, from 4 to 6 March 1998,

Bearing in mind United Nations resolutions and declarations such as those on indigenous peoples in relation to the establishment of a permanent forum for indigenous people within the United Nations system:

Article 1.2 of the United Nations Charter, in which the United Nations reaffirms as its purpose the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and other appropriate measures to strengthen universal peace;

- The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights (A/CONF.157/23), which mentioned the need for a permanent forum for indigenous peoples within the United Nations system;

- Article 22 of the United Nations Conference on Environment and Development, the Rio Declaration on Environment and Development, and chapters 11 and 26 of Agenda 21 relating to indigenous people;

- United Nations General Assembly resolution 50/157, in which the establishment of a permanent United Nations forum is identified as one of the important objectives of the International Decade of the World's Indigenous People;

- The Secretary-General's review of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people, which concludes that there are no United Nations mechanisms that give indigenous people the opportunity to take part in decision-making, and that there is no regular exchange of information between Governments, indigenous people and the United Nations system;

- The Declaration of the First International Indigenous Conference on a Permanent Forum in the United Nations System, held in Temuco, Chile, from 6 to 9 May 1997;

- The report of the first workshop on a permanent forum for indigenous people within the United Nations system, held in Copenhagen, Denmark, from 26 to 28 June 1995 in accordance with the Commission on Human Rights resolution 1995/30 (E/CN.4/Sub.2/AC.4/1995/7);

- The report of the second workshop on a permanent forum for indigenous people within the United Nations system, held in

accordance with Commission on Human Rights resolution 1997/30 in Santiago, Chile, from 30 June to 2 July 1997 (E/CN.4/1998/11 and Add.1),

Call for the speedy establishment of a permanent forum for indigenous people within the United Nations system, reporting directly to the Economic and Social Council (ECOSOC) and having the following characteristics:

1. MANDATE

- Promotion of peace and prosperity for indigenous people;
- All matters relating to indigenous people;
- Coordination within the United Nations system of activities relating to indigenous people;
- Guidance and advice to States, specialized agencies and other relevant bodies;
- Dissemination of information on the conditions and needs of indigenous people;
- Promotion of understanding between peoples with a view to facilitating the prevention and peaceful settlement of disputes;
- Formulation of all recommendations on any issue affecting indigenous people;
- Compliance with existing national and international norms;
- Issuing of proposals for harmonizing norms or laws with international law in the area of indigenous issues.

2. TERMS OF REFERENCE

The permanent forum's terms of reference should include: civil, political and social rights of indigenous people, cultural rights, human rights, lands and territories, environment, health, children, women, development, education, coordination of the activities of United Nations bodies relating or referring to indigenous people, biodiversity, constitutional reform with emphasis on recognition of the cultural diversity of States, conflict prevention, development of national legislation as regards the rights of indigenous people, right to life, impact of disasters caused by human activity on indigenous people, promotion of the world view of indigenous people, mechanisms for monitoring the implementation of legislation relating to indigenous people, reconstitution of indigenous peoples, indigenous economy, natural resources, training on the United Nations system, examination of the legal diversity of countries where indigenous people live and the effect of this pluralism, the development of language in furtherance of rights of indigenous people instead of customary law or normative systems, the growing use of the death penalty, recovery of indigenous lore, ethnology,

indigenous science and technology, indigenous people living in border regions, formulation of proposals for indigenous people living in national border zones to have freedom of movement across borders.

3. COMPOSITION

As indigenous people, we have the right to participate fully and actively in the permanent forum as equal partners with Governments. We propose that there should be an equal number of government and indigenous representatives. United Nations specialized agencies, non-governmental organizations and independent experts should have the opportunity to participate in the permanent forum's deliberations as observers without the right to vote.

The size of the membership should be left open, but we think that there should be between 5 and 10 indigenous representatives.

The relationship between the permanent forum and the Working Group on Indigenous Populations

We consider:

That the existing Working Group on Indigenous Populations has unique characteristics as regards the participation of indigenous people, unlike any other body within the system;

That the achievements of the Working Group on Indigenous Populations and the inter-sessional Working Group of the Commission on Human Rights have been, and are, fundamental to the indigenous movement and should therefore be taken into account in the discussion on the permanent forum;

That they are two different bodies of vital importance; they should therefore complement each other and one should not substitute for the other, which could result in strategies at variance with the indigenous movement;

That the Working Group on Indigenous Populations is a technical body, whereas the permanent forum is a political body, and therefore they are not in conflict with each other;

That the role of the Working Group is confined to the formulation of international norms for the protection of the human rights of indigenous people, while the role of the permanent forum is much broader, encompassing human rights among other matters;

That in the United Nations system there are examples of bodies which deal with the same issues such as the Committee on the Elimination of Discrimination against Women and the Committee against Torture. Therefore, the establishment of the forum and the simultaneous existence of the Working Group are not incompatible;

We conclude:

That the permanent forum and the Working Group are necessary and important platforms for our participation in the United Nations system, in order to apply the international provisions relating to our rights as indigenous people;

That the establishment of the permanent forum is an important objective as a political organ at the highest level which will permit our broad participation in the United Nations system in areas of concern to us;

That there should be a close relationship between the permanent forum and the fulfilment of the Working Group's mandate for the approval of the United Nations Declaration on the Rights of Indigenous Peoples and other issues of relevance to us as indigenous people;

That once the forum is established and its mandate and terms of reference decided, the mandate of the Working Group should be reviewed so that the latter complements the mandate of the permanent forum;

That in pursuance of the Working Group's mandate, we as indigenous peoples should consolidate its effectiveness in the discussion of the topics of the United Nations Declaration on the Rights of Indigenous Peoples and ensure that the Group's work is relevant to the new needs of indigenous people;

That it is necessary to strengthen our participation in the Working Group in order to ensure the approval of the United Nations Declaration on the Rights of Indigenous People and the establishment of a permanent forum within the framework of the Decade;

That the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights should continue to entrust to the Working Group normative tasks and specific actions for the promotion and protection of the rights of indigenous people.

Ukupseni, Kuna Yala (Panama), 6 March 1998